

ASSEMBLY BILL

No. 1569

Introduced by Assembly Member Correa

February 21, 2003

An act to amend Section 1596.871 of the Health and Safety Code, relating to care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1569, as introduced, Correa. Child day care facilities: criminal record information: disclosure.

Existing law, the California Child Day Care Facilities Act, provides for the licensure and regulation of child day care facilities by the State Department of Social Services. Under existing law, willful violation of any of these provisions is punishable as a misdemeanor.

Existing law requires the department to obtain criminal record information on specified individuals from appropriate law enforcement agencies prior to issuing a license or permit to operate or manage a child day care facility and prior to employment, residence, or presence in the facility.

This bill would require any person applying to operate or manage a child day care facility, and other specified persons, to agree that the criminal record information obtained from the appropriate law enforcement agency may be disclosed by the department to any parent or guardian of a client or prospective client in a licensed child day care facility.

Since a willful violation of the provisions applicable to child day care facilities is a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1596.871 of the Health and Safety Code
2 is amended to read:

3 1596.871. The Legislature recognizes the need to generate
4 timely and accurate positive fingerprint identification of
5 applicants as a condition of issuing licenses, permits, or
6 certificates of approval for persons to operate or provide direct
7 care services in a child *day* care center or family child care home.
8 Therefore, the Legislature supports the use of the fingerprint
9 live-scan technology, as defined in the long-range plan of the
10 Department of Justice for fully automating the processing of
11 fingerprints and other data by the year 1999, otherwise known as
12 the California Crime Information Intelligence System (CAL-CII),
13 to be used for applicant fingerprints. It is the intent of the
14 Legislature in enacting this section to require the fingerprints of
15 those individuals whose contact with child day care facility clients
16 may pose a risk to the children's health and safety.

17 (a) (1) Before issuing a license or special permit to any person
18 to operate or manage a *child* day care facility, the department shall
19 secure from an appropriate law enforcement agency a criminal
20 record to determine whether the applicant or any other person
21 specified in subdivision (b) has ever been convicted of a crime
22 other than a minor traffic violation or arrested for any crime
23 specified in Section 290 of the Penal Code, for violating Section
24 245 or 273.5, subdivision (b) of Section 273a or, prior to January
25 1, 1994, paragraph (2) of Section 273a, of the Penal Code, or for
26 any crime for which the department cannot grant an exemption if
27 the person was convicted and the person has not been exonerated.
28 *Any person applying to operate or manage a child day care facility,*
29 *or any other person specified in subdivision (b), shall agree that*

1 *the criminal record information obtained from the appropriate law*
2 *enforcement agency pursuant to this section may be disclosed by*
3 *the department to any parent or guardian of a client or prospective*
4 *client in a licensed child day care facility.*

5 (2) The criminal history information shall include the full
6 criminal record, if any, of those persons, and subsequent arrest
7 information pursuant to Section 11105.2 of the Penal Code.

8 (3) No fee shall be charged by the Department of Justice or the
9 department for the fingerprinting of an applicant who will serve
10 six or fewer children or any family day care applicant for a license,
11 or for obtaining a criminal record of an applicant pursuant to this
12 section.

13 (4) The following shall apply to the criminal record
14 information:

15 (A) If the State Department of Social Services finds that the
16 applicant or any other person specified in subdivision (b) has been
17 convicted of a crime, other than a minor traffic violation, the
18 application shall be denied, unless the director grants an
19 exemption pursuant to subdivision (f).

20 (B) If the State Department of Social Services finds that the
21 applicant, or any other person specified in subdivision (b), is
22 awaiting trial for a crime other than a minor traffic violation, the
23 State Department of Social Services may cease processing the
24 application until the conclusion of the trial.

25 (C) If no criminal record information has been recorded, the
26 Department of Justice shall provide the applicant and the State
27 Department of Social Services with a statement of that fact.

28 (D) If the State Department of Social Services finds after
29 licensure that the licensee, or any other person specified in
30 paragraph (2) of subdivision (b), has been convicted of a crime
31 other than a minor traffic violation, the license may be revoked,
32 unless the director grants an exemption pursuant to subdivision (f).

33 (E) An applicant and any other person specified in subdivision
34 (b) shall submit a second set of fingerprints to the Department of
35 Justice, for the purpose of searching the records of the Federal
36 Bureau of Investigation, in addition to the search required by
37 subdivision (a). If an applicant meets all other conditions for
38 licensure, except receipt of the Federal Bureau of Investigation's
39 criminal history information for the applicant and persons listed in
40 subdivision (b), the department may issue a license if the applicant

1 and each person described by subdivision (b) has signed and
2 submitted a statement that he or she has never been convicted of
3 a crime in the United States, other than a traffic infraction as
4 defined in paragraph (1) of subdivision (a) of Section 42001 of the
5 Vehicle Code. If, after licensure, the department determines that
6 the licensee or person specified in subdivision (b) has a criminal
7 record, the license may be revoked pursuant to Section 1596.885.
8 The department may also suspend the license pending an
9 administrative hearing pursuant to Section 1596.886.

10 (b) (1) In addition to the applicant, this section shall be
11 ~~applicable~~ *apply* to criminal convictions of the following persons:

12 (A) Adults responsible for administration or direct supervision
13 of staff.

14 (B) Any person, other than a child, residing in the facility.

15 (C) Any person who provides care and supervision to the
16 children.

17 (D) Any staff person, volunteer, or employee who has contact
18 with the ~~children~~ *children, except any of the following:*

19 (i) A volunteer providing time-limited specialized services
20 shall be exempt from the requirements of this subdivision if this
21 person is directly supervised by the licensee or a facility employee
22 with a criminal record clearance or exemption, the volunteer
23 spends no more than 16 hours per week at the facility, and the
24 volunteer is not left alone with children in care.

25 (ii) A student enrolled or participating at an accredited
26 educational institution shall be exempt from the requirements of
27 this subdivision if the student is directly supervised by the licensee
28 or a facility employee with a criminal record clearance or
29 exemption, the facility has an agreement with the educational
30 institution concerning the placement of the student, the student
31 spends no more than 16 hours per week at the facility, and the
32 student is not left alone with children in care.

33 (iii) A volunteer who is a relative, legal guardian, or foster
34 parent of a client in the facility shall be exempt from the
35 requirements of this subdivision.

36 (iv) A contracted repair person retained by the facility, if not
37 left alone with children in care, shall be exempt from the
38 requirements of this subdivision.

39 (v) Any person similar to those described in this subdivision,
40 as defined by the department in regulations.

1 (E) If the applicant is a firm, partnership, association, or
2 corporation, the chief executive officer, other person serving in
3 like capacity, or a person designated by the chief executive officer
4 as responsible for the operation of the facility, as designated by the
5 applicant agency.

6 (F) If the applicant is a local educational agency, the president
7 of the governing board, the school district superintendent, or a
8 person designated to administer the operation of the facility, as
9 designated by the local educational agency.

10 (G) Additional officers of the governing body of the applicant,
11 or other persons with a financial interest in the applicant, as
12 determined necessary by the department by regulation. The
13 criteria used in the development of these regulations shall be based
14 on the person's capability to exercise substantial influence over the
15 operation of the facility.

16 ~~(H)~~

17 (2) This section does not apply to employees of child care and
18 development programs under contract with the State Department
19 of Education who have completed a criminal records clearance as
20 part of an application to the Commission on Teacher
21 Credentialing, and who possess a current credential or permit
22 issued by the commission, including employees of child care and
23 development programs that serve both children subsidized under,
24 and children not subsidized under, a State Department of
25 Education contract. The Commission on Teacher Credentialing
26 shall notify the department upon revocation of a current credential
27 or permit issued to an employee of a child care and development
28 program under contract with the State Department of Education.

29 ~~(I)~~

30 (3) This section does not apply to employees of a child care and
31 development program operated by a school district, county office
32 of education, or community college district under contract with the
33 State Department of Education who have completed a criminal
34 record clearance as a condition of employment. The school
35 district, county office of education, or community college district
36 upon receiving information that the status of an employee's
37 criminal record clearance has changed shall submit that
38 information to the department.

39 ~~(2)~~

1 (4) Nothing in this subdivision shall prevent a licensee from
2 requiring a criminal record clearance of any individuals exempt
3 from the requirements under this subdivision.

4 (c) (1) (A) Subsequent to initial licensure, any person
5 specified in subdivision (b) and not exempted from fingerprinting
6 shall, as a condition to employment, residence, or presence in a
7 child day care facility be fingerprinted and sign a declaration under
8 penalty of perjury regarding any prior criminal conviction. The
9 licensee shall submit these fingerprints to the Department of
10 Justice, along with a second set of fingerprints for the purpose of
11 searching the records of the Federal Bureau of Investigation, or to
12 comply with paragraph (1) of subdivision (h), prior to the person's
13 employment, residence, or initial presence in the child day care
14 facility.

15 (B) These fingerprints shall be on a card provided by the State
16 Department of Social Services for the purpose of obtaining a
17 permanent set of fingerprints and submitted to the Department of
18 Justice by the licensee or sent by electronic transmission in a
19 manner approved by the State Department of Social Services. A
20 licensee's failure to submit fingerprints to the Department of
21 Justice, or to comply with paragraph (1) of subdivision (h), as
22 required in this section, shall result in the citation of a deficiency,
23 and an immediate assessment of civil penalties in the amount of
24 one hundred dollars (\$100) per violation. The State Department of
25 Social Services may assess civil penalties for continued violations
26 permitted by Sections 1596.99 and 1597.62. The fingerprints shall
27 then be submitted to the State Department of Social Services for
28 processing. Within 14 calendar days of the receipt of the
29 fingerprints, the Department of Justice shall notify the State
30 Department of Social Services of the criminal record information,
31 as provided in this subdivision. If no criminal record information
32 has been recorded, the Department of Justice shall provide the
33 licensee and the State Department of Social Services with a
34 statement of that fact within 14 calendar days of receipt of the
35 fingerprints. If new fingerprints are required for processing, the
36 Department of Justice shall, within 14 calendar days from the date
37 of receipt of the fingerprints, notify the licensee that the
38 fingerprints were illegible.

39 (C) Documentation of the individual's clearance or exemption
40 shall be maintained by the licensee, and shall be available for

1 inspection. When live-scan technology is operational, as defined
2 in Section 1522.04, the Department of Justice shall notify the
3 department, as required by that section, and notify the licensee by
4 mail within 14 days of electronic transmission of the fingerprints
5 to the Department of Justice, if the person has no criminal record.
6 Any violation of the regulations adopted pursuant to Section
7 1522.04 shall result in the citation of a deficiency and an
8 immediate assessment of civil penalties in the amount of one
9 hundred dollars (\$100) per violation. The department may assess
10 civil penalties for continued violations, as permitted by Sections
11 1596.99 and 1597.62.

12 (2) (A) Except for persons specified in paragraph (2) of
13 subdivision (b), the licensee shall endeavor to ascertain the
14 previous employment history of persons required to be
15 fingerprinted under this subdivision. If it is determined by the
16 department, on the basis of fingerprints submitted to the
17 Department of Justice, that the person has been convicted of a sex
18 offense against a minor, an offense specified in Section 243.4,
19 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State
20 Department of Social Services shall notify the licensee to act
21 immediately to terminate the person's employment, remove the
22 person from the child day care facility, or bar the person from
23 entering the child day care facility. The department may
24 subsequently grant an exemption pursuant to subdivision (f). If the
25 conviction was for another crime except a minor traffic violation,
26 the licensee shall, upon notification by the State Department of
27 Social Services, act immediately to either (1) terminate the
28 person's employment, remove the person from the child day care
29 facility, or bar the person from entering the child day care facility;
30 or (2) seek an exemption pursuant to subdivision (f). ~~The~~

31 (B) ~~The~~ department shall determine if the person shall be
32 allowed to remain in the facility until a decision on the exemption
33 is rendered. A licensee's failure to comply with the department's
34 prohibition of employment, contact with clients, or presence in the
35 facility as required by this paragraph shall be grounds for
36 disciplining the licensee pursuant to Section 1596.885 or
37 1596.886.

38 (3) The department may issue an exemption on its own motion
39 pursuant to subdivision (f) if the person's criminal history
40 indicates that the person is of good character based on the age,

1 seriousness, and frequency of the conviction or convictions. The
2 department, in consultation with interested parties, shall develop
3 regulations to establish the criteria to grant an exemption pursuant
4 to this paragraph.

5 (4) Concurrently with notifying the licensee pursuant to
6 paragraph (3), the department shall notify the affected individual
7 of his or her right to seek an exemption pursuant to subdivision (f).
8 The individual may seek an exemption only if the licensee
9 terminates the person's employment or removes the person from
10 the facility after receiving notice from the department pursuant to
11 paragraph (3).

12 (d) (1) For purposes of this section or any other provision of
13 this chapter, a conviction means a plea or verdict of guilty or a
14 conviction following a plea of nolo contendere. Any action which
15 the department is permitted to take following the establishment of
16 a conviction may be taken when the time for appeal has elapsed,
17 or the judgment of conviction has been affirmed on appeal or when
18 an order granting probation is made suspending the imposition of
19 sentence, notwithstanding a subsequent order pursuant to Sections
20 1203.4 and 1203.4a of the Penal Code permitting the person to
21 withdraw his or her plea of guilty and to enter a plea of not guilty,
22 or setting aside the verdict of guilty, or dismissing the accusation,
23 information, or indictment. For purposes of this section or any
24 other provision of this chapter, the record of a conviction, or a copy
25 thereof certified by the clerk of the court or by a judge of the court
26 in which the conviction occurred, shall be conclusive evidence of
27 the conviction. For purposes of this section or any other provision
28 of this chapter, the arrest disposition report certified by the
29 Department of Justice, or documents admissible in a criminal
30 action pursuant to Section 969b of the Penal Code, shall be prima
31 facie evidence of conviction, notwithstanding any other provision
32 of law prohibiting the admission of these documents in a civil or
33 administrative action.

34 (2) For purposes of this section or any other provision of this
35 chapter, the department shall consider criminal convictions from
36 another state or federal court as if the criminal offense was
37 committed in this state.

38 (e) The State Department of Social Services shall not use a
39 record of arrest to deny, revoke, or terminate any application,
40 license, employment, or residence unless the department

1 investigates the incident and secures evidence, whether or not
2 related to the incident of arrest, that is admissible in an
3 administrative hearing to establish conduct by the person that may
4 pose a risk to the health and safety of any person who is or may
5 become a client. The State Department of Social Services is
6 authorized to obtain any arrest or conviction records or reports
7 from any law enforcement agency as necessary to the performance
8 of its duties to inspect, license, and investigate community care
9 facilities and individuals associated with a community care
10 facility.

11 (f) (1) After review of the record, the director may grant an
12 exemption from disqualification for a license or special permit as
13 specified in paragraphs (1) and (4) of subdivision (a), or for
14 employment, residence, or presence in a child day care facility as
15 specified in paragraphs (3); ~~and (4); and (5)~~ of subdivision (c) if
16 the director has substantial and convincing evidence to support a
17 reasonable belief that the applicant and the person convicted of the
18 crime, if other than the applicant, are of good character so as to
19 justify issuance of the license or special permit or granting of an
20 exemption for purposes of subdivision (c). However, no
21 exemption shall be granted pursuant to this subdivision if the
22 conviction was for any of the following offenses:

23 (A) An offense specified in Section 220, 243.4, or 264.1,
24 subdivision (a) of Section 273a or, prior to January 1, 1994,
25 paragraph (1) of Section 273a, Section 273d, 288, or 289,
26 subdivision (a) of Section 290, or Section 368 of the Penal Code,
27 or was a conviction of another crime against an individual
28 specified in subdivision (c) of Section 667.5 of the Penal Code.

29 (B) A felony offense specified in Section 729 of the Business
30 and Professions Code or Section 206 or 215, subdivision (a) of
31 Section 347, subdivision (b) of Section 417, or subdivision (a) or
32 (b) of Section 451 of, the Penal Code.

33 (2) The department shall not prohibit a person from being
34 employed or having contact with clients in a facility on the basis
35 of a denied criminal record exemption request or arrest
36 information unless the department complies with the requirements
37 of Section 1596.8897.

38 (g) Upon request of the licensee, who shall enclose a
39 self-addressed stamped postcard for this purpose, the Department
40 of Justice shall verify receipt of the fingerprints.

1 (h) (1) For the purposes of compliance with this section, the
2 department may permit an individual to transfer a current criminal
3 record clearance, as defined in subdivision (a), from one facility
4 to another, as long as the criminal record clearance has been
5 processed through a state licensing district office, and is being
6 transferred to another facility licensed by a state licensing district
7 office. The request shall be in writing to the department, and shall
8 include a copy of the person's driver's license or valid
9 identification card issued by the Department of Motor Vehicles, or
10 a valid photo identification issued by another state or the United
11 States government if the person is not a California resident. Upon
12 request of the licensee, who shall enclose a self-addressed stamped
13 envelope for this purpose, the department shall verify whether the
14 individual has a clearance that can be transferred.

15 (2) The State Department of Social Services shall hold criminal
16 record clearances in its active files for a minimum of two years
17 after an employee is no longer employed at a licensed facility in
18 order for the criminal record clearances to be transferred.

19 (i) Amendments to this section made in the 1998 calendar year
20 shall be implemented commencing 60 days after the effective date
21 of the act amending this section in the 1998 calendar year, except
22 those provisions for the submission of fingerprints for searching
23 the records of the Federal Bureau of Investigation, which shall be
24 implemented commencing January 1, 1999.

25 SEC. 2. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.

